

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

VS.

4:07-CR-00244-01-BRW

ALBERT SNOW

DEFENDANT

ORDER

Pending is Defendant's Petition for Writ of Mandamus (Doc. No. 67).

Writs of Mandamus are authorized by the All Writs Act found in Title 28 U.S.C. § 1651. According to the Supreme Court, "[t]he All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling."¹

Here, Defendant's "Petition for Writ of Mandamus" requests that he be released from custody and his conviction set aside.² In sum, Defendant states that his conviction violates the Due Process and Equal Protection Clauses of the United States Constitution. It is well settled, however, that a defendant in federal custody seeking to attack the constitutionality of his sentence and have it vacated, set aside, or corrected must do so by petition under 28 U.S.C. § 2255.³ Thus, although Defendant titled his motion as a "Petition for Writ of Mandamus," in substance it is a § 2255 Petition and will be reclassified as such.⁴

¹*Pennsylvania Bureau of Correction v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985).

²Doc. No. 67.

³*Abdullah v. Hedrick*, 392 F.3d 957, 959 (8th Cir. 2004); *United States v. Noske*, 235 F.3d 405, 406 (8th Cir. 2000).

⁴See *Noske*, 235 F.3d at 406; *United States v. Patton*, 309 F.3d 1093 (8th Cir. 2002) (listing numerous cases).

Prior to filing the petition at hand, Defendant filed a Motion to Vacate, Set Aside or Correct Sentence under § 2255, which I denied.⁵ The Eighth Circuit Court of Appeals has made it clear that before a defendant can file a second or successive § 2255 Petition he must obtain a Certificate of Appealability.⁶ Defendant, however, has failed to do so.

Accordingly, Defendant's Petition for Writ of Mandamus (Doc. No. 67) is DENIED.

IT IS SO ORDERED this 9th day of November, 2012.

/s/Billy Roy Wilson
UNITED STATES DISTRICT JUDGE

⁵Doc. Nos. 51, 52.

⁶*Boyd v. United States*, 304 F.3d 813, 814 (8th Cir.2002); *United States v. Lambros*, 404 F.3d 1034, 1036 (8th Cir.2005) (it is well established that inmates may not bypass the authorization requirement for filing a second or successive section 2255 petition by purporting to invoke some other procedure).